

BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP

TELEPHONE: (714) 557-3800

INTELLECTUAL PROPERTY LAW
1279 OAKMEAD PARKWAY
SUNNYVALE, CA 94085-4040

FACSIMILE: (714) 557-3347

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Art Group: 2623

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Date: January 17, 2008

From: Thinh V. Nguyen, Reg. No. 42,034

Our Docket No.: 7593P002

Number of pages 7 including this sheet.

Application No.: 10/718,376

Filing Date: 11/19/2003

Enclosed are the following documents:

- Amendment: Response Restr. Req. (3 pgs)
- Appeal Brief (pgs)
- Application: _____
(pgs) w/cover & abstract)
- Assignment & Cover Sheet (pgs)
- Certificate of Eacsimile _____
- Continued Prosecution Application (CPA)
- Declaration & POA (pgs)
- Drawings: sheets, figures
- Extension of Time: _____
- Fee Transmittal (in duplicate)
- IDS & PTO/SB/08 (pgs)
- Other: _____

- Issue Fee Transmittal
- Notice of Appeal (in duplicate)
- Petition for: _____
- Request for Continued Examination (RCE)
- Reply Brief (____ pgs)
- Request & Certification Under 35 USC 122(b)(2)(B)(i)
- Request to Rescind Previous Nonpublication Request
- Response to Notice of Missing Parts & Formalities Letter
- Response to Written Opinion (____ pgs)
- Terminal Disclaimer
- Transmittal of Publication Fee Due
- Transmittal Letter

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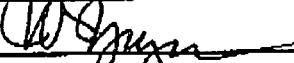
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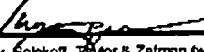
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TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i>		Application No.	10/718,376
		Filing Date	November 19, 2003
		First Named Inventor	Richard C. Fickle
		Art Unit	2623
		Examiner Name	Son P. Huynh
Total Number of Pages in This Submission	6	Attorney Docket Number	7593P002

ENCLOSURES (check all that apply)				
<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> PTO/SB/08 <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Basic Filing Fee <input type="checkbox"/> Declaration/POA <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53		<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) <input type="checkbox"/> Landscape Table on CD		<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below): <div style="border: 1px solid black; height: 40px; width: 100%;"></div>
Remarks				

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm or Individual name	Thinh V. Nguyen, Reg. No. 42,034 BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP		
Signature			
Date	January 17, 2008		

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Signature		Date	January 17, 2008

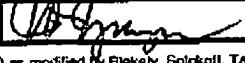
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FEE TRANSMITTAL for FY 2007		<i>Complete if Known</i>	
Patent fees are subject to annual revision.			
<input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27.		Application Number <u>10/718,376</u> Filing Date <u>November 19, 2003</u> First Named Inventor <u>Richard C. Fickle</u> Examiner Name <u>Son P. Huynh</u> Art Unit <u>2623</u> Attorney Docket No. <u>7593P002</u>	
TOTAL AMOUNT OF PAYMENT <u>(\$)</u>			

METHOD OF PAYMENT (check all that apply)			
<input type="checkbox"/> Check <input type="checkbox"/> Credit card <input type="checkbox"/> Money Order <input type="checkbox"/> None <input type="checkbox"/> Other (please identify): _____			
<input checked="" type="checkbox"/> Deposit Account Deposit Account Number: <u>02-2666</u> Deposit Account Name: <u>Blakely, Sokoloff, Taylor & Zafman LLP</u>			
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FEE CALCULATION					
Large Entity		Small Entity			
Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet.	
2053	130	2053	130	Non-English specification	
1251	120	2251	60	Extension for reply within first month	
1252	460	2252	230	Extension for reply within second month	
1253	1,050	2253	525	Extension for reply within third month	
1254	1,640	2254	820	Extension for reply within fourth month	
1255	2,230	2255	1,115	Extension for reply within fifth month	
1401	510	2401	255	Notice of Appeal	
1402	510	2402	255	Filing a brief in support of an appeal	
1403	1,030	2403	515	Request for oral hearing	
1451	1,510	2451	1,510	Petition to institute a public use proceeding	
1460	130	2460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
1809	810	1809	405	Filing a submission after final rejection (37 CFR § 1.129(a))	
1810	810	2810	405	For each additional invention to be examined (37 CFR § 1.129(b))	
Other fee (specify) _____					
SUBTOTAL (2) <u>(\$)</u>					

SUBMITTED BY					
Name (Print/Type) <u>Thinh V. Nguyen</u>		Registration No. (Attorney/Agent) <u>42,034</u>	Telephone <u>(714) 557-3800</u>	<i>Complete (if applicable)</i>	
Signature 				Date <u>01/17/08</u>	

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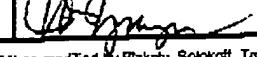
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FEE TRANSMITTAL for FY 2007		<i>Complete if Known</i>	
Patent fees are subject to annual revision.		Application Number	10/718,376
□ Applicant claims small entity status. See 37 CFR 1.27.		Filing Date	November 19, 2003
TOTAL AMOUNT OF PAYMENT (\$)		First Named Inventor	Richard C. Fickle
		Examiner Name	Son P. Huynh
		Art Unit	2623
		Attorney Docket No.	7593P002

METHOD OF PAYMENT (check all that apply)	
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<input checked="" type="checkbox"/> Deposit Account Deposit Account Number: <u>02-2666</u> Deposit Account Name: <u>Blakely, Sokoloff, Taylor & Zafman LLP</u>	
For the above-identified deposit account, the Director is hereby authorized to: (check all that apply) <input type="checkbox"/> Charge fee(s) indicated below <input type="checkbox"/> Charge fee(s) indicated below, except for the filing fee <input checked="" type="checkbox"/> Charge any additional fee(s) or underpayment of fee(s) <input checked="" type="checkbox"/> Credit any overpayments under 37 CFR §§ 1.16, 1.17, 1.18 and 1.20.	

FEE CALCULATION			
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Fee Code	Fee Code	Fee Description	Fee Paid
1051	130	2051 65 Surcharge - late filing fee or oath	
1052	50	2052 25 Surcharge - late provisional filing fee or cover sheet.	
2053	130	2053 130 Non-English specification	
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1402	510	2402 255 Filing a brief in support of an appeal	
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1451	1,510	2451 1,510 Petition to institute a public use proceeding	
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1806	180	1806 180 Submission of Information Disclosure Stmt	
1809	810	1809 405 Filing a submission after final rejection (37 CFR § 1.129(a))	
1810	810	2810 405 For each additional invention to be examined (37 CFR § 1.129(b))	
Other fee (specify) _____			
SUBTOTAL (2) (\$)			

<i>Complete if applicable</i>					
SUBMITTED BY					
Name (Print/Type)	Thinh V. Nguyen	Registration No. (Attorney/Agent)	42,034	Telephone	(714) 557-3800
Signature					Date 01/17/08

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Appl. No. 10/718,376
 Amdt. Dated January 17, 2008
 Reply to Office Action of December 18, 2007

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application. No. :	10/718,376	Confirmation No. 9538
Applicant :	Richard C. Fickle	
Filed :	November 19, 2003	
TC/A.U. :	2623	
Examiner :	Son P. Huynh	
Docket No. :	7593.P002	
Customer No. :	8791	

Commissioner for Patents
 PO Box 1450
 Alexandria VA 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT

Sir:

In the Office Action mailed December 18, 2007, the Examiner contends that the application contains claims directed to the following patentably distinct species illustrated in Figures 1-7. The Examiner contends that the species are independent or distinct because there would be a serious burden on the Examiner if restriction is not required since the claims have acquired a separate status in the art in view of their different classification, their recognized divergent subject matter, and/or the claims require a different field of search. Applicant respectfully disagrees for the following reasons.

First, the restriction requirement is defective because the Examiner does not provide a grouping of claims or species. Accordingly, Applicant cannot elect when there is nothing to elect from. “[R]estriction requirements must provide a clear demarcation between restricted subject matter to allow determination that claims in continuing applications are consonant and therefore deserving of § 121’s protections.” Geneva Pharmaceuticals Inc. v. GlaxoSmithKline PLC., 68 USPQ2d, 1865, 1871. Here, the Examiner does not provide a clear demarcation between restricted subject matter and merely alleges that the species are independent or distinct.

Second, the Examiner did not properly establish the burden as required. Where the inventions as claimed are shown to be independent or distinct under the criteria of MPEP 806.05(c) - 806.06, the examiner, in order to establish reasons for insisting upon restriction, must

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TVN/tn

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Amdt. Dated January 17, 2008
Reply to Office Action of December 18, 2007

explain why there would be a serious burden on the examiner if restriction is not required. Thus the examiner must show by appropriate explanation one of the following: (A) Separate classification thereof: This shows that each invention has attained recognition in the art as a separate subject for inventive effort, and also a separate field of search. Patents need not be cited to show separate classification. (B) A separate status in the art when they are classifiable together: Separate status in the art may be shown by citing patents which are evidence of such separate status, and also of a separate field of search. (C) A different field of search: Where it is necessary to search for one of the inventions in a manner that is not likely to result in finding art pertinent to the other invention(s). The indicated different field of search must in fact be pertinent to the type of subject matter covered by the claims. Where, however, the classification is the same and the field of search is the same and there is no clear indication of separate future classification and field of search, no reasons exist for dividing among independent or related inventions. MPEP 808.02. Furthermore, the Examiner must provide reasons and/or examples to support conclusions. MPEP 803. Here, the Examiner has not shown by appropriate explanation any one of the above. Instead, the Examiner merely recites the above language. The Examiner has not shown the specific classifications or the specific separate status and separate field of search. The Examiner merely reaches the conclusions without providing reasons, explanations, or examples.

Third, the restriction requirement was not timely provided. 37 CFR 1.142 provides that the restriction requirement may be made at any time before final action. Accordingly, once a final office action is issued, the Examiner cannot issue a restriction requirement. A final Office Action on this application was issued on July 11, 2006. Although that final Office Action was issued by another Examiner, this is not a reason to allow the current Examiner to issue a restriction requirement.

Since the restriction requirement is defective by not giving a grouping of claims or species, or not providing the specific classifications or fields of search, or untimely issued, Applicant cannot make an election. However, in compliance with 35 USC 121, Applicant elects claims 1-19, 25-40, and 41-45 for examination.

Appl. No. 10/718,376
Amtd. Dated January 17, 2008
Reply to Office Action of December 18, 2007

Conclusion

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: January 17, 2008

By 
Thinh V. Nguyen
Reg. No. 42,034
Tel.: (714) 557-3800 (Pacific Coast)

12400 Wilshire Boulevard, Seventh Floor
Los Angeles, California 90025

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Date: January 17, 2008

Tu Nguyen

January 17, 2008


Date